

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.** See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

**FILED BY CLERK**  
**JUNE 15 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2008-0262
Appellee,	)	2 CA-CR 2008-0263
	)	(Consolidated)
v.	)	DEPARTMENT A
	)	
RENE FLORES LEYVA,	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
Appellant.	)	Rule 111, Rules of
_____	)	the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR-20062316 and CR-20072365

Honorable Hector E. Campoy, Judge  
Honorable Edgar B. Acuña, Judge

AFFIRMED

Robert J. Hirsh, Pima County Public Defender  
By John F. Palumbo

Tucson  
Attorneys for Appellant

ESPINOSA, Judge.

¶1 In this consolidated appeal, Rene Flores Leyva challenges his convictions and sentences for aggravated driving under the influence of an intoxicant (DUI), criminal

damage, and four counts of endangerment, all arising out of an incident in June 2006, as well as his convictions and sentences for again committing aggravated DUI in May 2007. The two cases were tried by separate juries, but consolidated for sentencing. After finding the 2006 offense to be a historical prior felony conviction for the purpose of sentencing on the 2007 offense, the trial court sentenced Leyva to presumptive, concurrent terms of imprisonment, some enhanced, the longest of which is 4.5 years.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing he has reviewed the entire record and found no arguable issue to raise on appeal. In compliance with *Clark*, counsel has provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” 196 Ariz. 530, ¶ 32, 2 P.3d at 97. Leyva has not filed a supplemental brief.

¶3 Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and are satisfied it supports counsel’s recitation of the facts. Viewed in the light most favorable to upholding the jury’s verdicts, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that in June 2006 Leyva, driving at a speed of approximately forty miles per hour, had struck the rear end of another vehicle that was stopped at a traffic signal. The collision caused substantial damage to the other vehicle and injuries to at least two of its four occupants. Pima County Sheriff’s deputies arrived at the scene, arrested Leyva after observing signs of his intoxication, and administered a blood

test that established Leyva's alcohol concentration was over .25. At trial, Leyva stipulated that he had known before his arrest that his driver's license had been suspended. The jury found Leyva guilty of two counts of aggravated DUI, finding he had been driving while impaired and with an alcohol concentration of .08 or more, both while his driver's license was suspended; criminal damage; and four counts of misdemeanor endangerment.

¶4 At Leyva's second trial, the evidence established that a Pascua Yaqui police officer had stopped him in May 2007 after she had seen him turn without signaling and had identified a problem with his vehicle's registration. Leyva was arrested after he had been unable to produce a driver's license and exhibited several signs of intoxication, and a subsequent blood test established his alcohol content was over .09. Testimony from the custodian of records for the Motor Vehicle Division of the Arizona Department of Transportation established that Leyva's driver's license had been suspended and revoked before May 2007 and that he had been notified of those actions. The jury found Leyva guilty of two counts of aggravated DUI, finding he had been driving while impaired and with an alcohol concentration of .08 or more, both while his driver's license was suspended or revoked.

¶5 Substantial evidence supported findings of all the elements necessary for Leyva's convictions, *see* A.R.S. §§ 13-1201; 13-1602(B)(2); 28-1381(A)(1), (2); 28-1383(A)(1), and his sentences were within the ranges authorized by statute. *See* A.R.S.

§§ 13-702(D), 13-703(B)(2), (I).<sup>1</sup> In our examination of the record pursuant to *Anders*, we have found no reversible error and no arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744. We therefore affirm Leyva’s convictions and sentences.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge

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<sup>1</sup>The provisions of Arizona’s criminal code were renumbered effective December 31, 2008. *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. We cite to the statues currently in effect.